

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JEFFREY L. BURTCH, CHAPTER 7
TRUSTEE, FACTORY 2-U STORES,
INC., *et al.*,

Plaintiff,

v.

MILBERG FACTORS, INC.
CAPITAL FACTORS, INC., THE CIT
GROUP/COMMERCIAL SERVICES, INC.,
GMAC COMMERCIAL FINANCE LLC,
HSBC BUSINESS CREDIT (USA) INC.,
ROSENTHAL AND ROSENTHAL, INC.,
STERLING FACTORS CORPORATION,
WELLS FARGO CENTURY, INC.,

Defendants.

Civil Action No. 07-556-***

DEFENDANT ROSENTHAL'S MOTION TO DISMISS THE COMPLAINT

Defendant Rosenthal and Rosenthal, Inc. ("Rosenthal") hereby moves the Court to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for the reasons set forth in both the *Memorandum of Law in Support of Defendant The CIT Group/Commercial Services, Inc.'s Motion to Dismiss the Complaint*, filed by The CIT Group/Commercial Services, Inc. on December 14, 2007 (D.I. 27) (the "CIT motion"), and *Opening Brief of Defendants GMAC Commercial Finance LLC, Sterling Factors Corporation and Wells Fargo Century, Inc. In Support of Their Motion to Dismiss*, filed by GMAC Commercial Finance LLC, Sterling Factors Corporation, and Wells Fargo Century, Inc. on December 17, 2007 (D.I. 31) (the "GMAC motion"). By express reference thereto, Rosenthal joins, adopts, and/or incorporates the CIT and

GMAC motions fully herein.

Respectfully submitted,

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP



C. Barr Flinn (No. 4092)

Elena C. Norman (No. 4780)

Monté T. Squire (No. 4764)

The Brandywine Building

1000 West Street, 17th Floor

Wilmington, Delaware 19801

(302) 571-6600

msquire@ycst.com

Attorneys for Defendant Rosenthal & Rosenthal, Inc.

Dated: December 17, 2007

CERTIFICATE OF SERVICE

I, Monté T. Squire, Esquire, hereby certify that on December 17, 2007, I caused to be served a true and correct copy of the foregoing document upon the following counsel of record as indicated:

BY CM/ECF, E-MAIL & HAND DELIVERY

David J. Baldwin, Esquire
Potter Anderson & Corroon, LLP
1313 N. Market St., Hercules Plaza, 6th Flr.
PO Box 951
Wilmington, DE 19899
dbaldwin@potteranderson.com

Shelly A. Kinsella, Esquire
Robert W. Pedigo, Esquire
Cooch & Taylor
824 Market St. Mall #1000
Wilmington, DE 19801
skinsella@coochtaylor.com
rpedigo@ctlaw.com

Stephen B. Brauerman, Esquire
The Bayard Firm
222 Delaware Avenue, Suite 900
PO Box 25130
Wilmington, DE 19899
sbrauerman@bayardfirm.com

Mark D. Olivere, Esquire
Edwards Angell Palmer & Dodge LLP
919 N. Market Street, Suite 1500
Wilmington, DE 19801
molivere@eapdlaw.com

Michael D. Debaecke, Esquire
David Kyle Sheppard, Esquire
Blank Rome LLP
1201 N. Market Street, Suite 800
Wilmington, DE 19801
dbaecke@blankrome.com
sheppard@blankrome.com

Jeffrey R. Waxman, Esquire
Cozen & O'Connor
Chase Manhattan Centre
1201 N. Market St., Suite 1400
Wilmington, DE 19801
jwaxman@cozen.com

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP



C. Barr Flinn (No. 4092)
Elena C. Norman (No. 4780)
Monté T. Squire (No. 4764)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
(302) 571-6600
msquire@ycst.com

Attorneys for Defendant Rosenthal & Rosenthal, Inc

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JEFFREY L. BURTCH, CHAPTER 7
TRUSTEE, FACTORY 2-U STORES,
INC., *et al.*,

Plaintiff,

v.

MILBERG FACTORS, INC.
CAPITAL FACTORS, INC., THE CIT
GROUP/COMMERCIAL SERVICES, INC.,
GMAC COMMERCIAL FINANCE LLC,
HSBC BUSINESS CREDIT (USA) INC.,
ROSENTHAL AND ROSENTHAL, INC.,
STERLING FACTORS CORPORATION,
WELLS FARGO CENTURY, INC.,

Defendants.

Civil Action No. 07-556-***

ORDER

At Wilmington this ____ day of _____, 2007, having considered Defendant Rosenthal and Rosenthal, Inc.'s Motion to Dismiss the Complaint, and the parties' arguments and briefing in support thereof and in opposition thereto,

IT IS HEREBY ORDERED that Defendant Rosenthal's Motion to Dismiss the Complaint is GRANTED.

United States District Judge